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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/120,970	07/22/98	CURTISS	R MEGAN-100CON

HM12/0517

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EXAMINER

RYAN, V

ART UNIT	PAPER NUMBER
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1641

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DATE MAILED:

05/17/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/120970

Applicant(s)

CURTISS et al

Examiner

V. RYAN

Group Art Unit

1641

--The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address--

Period for Response

A SHORTENED STATUTORY PERIOD FOR RESPONSE IS SET TO EXPIRE 1 (one) MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a response be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for response specified above is less than thirty (30) days, a response within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for response is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to respond within the set or extended period for response will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on 12/6/99 and 3/13/2000.
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 30-33, 35, 36-65 is/are pending in the application.
- Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☐ Claim(s) _____ is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☒ Claim(s) 30-33, 35, 36-65 are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
- ☐ received.
- ☐ received in Application No. (Series Code/Serial Number) _____.
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____.

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____ ☐ Interview Summary, PTO-413
- ☐ Notice of References Cited, PTO-892 ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948 ☐ Other _____

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DETAILED ACTION

The Examiner acknowledges receipt of the amendment filed December 6, 1999 and March 13, 2000. The Examiner also acknowledges receipt of the Information Disclosure Statement filed January 24, 2000.

Election/Restriction

Applicant's election without traverse of Group II (claims 30-35) in Paper No. 7 is acknowledged.

In this application:

Claims 1-29 and 34 were canceled.

Claims 30, 31 and 33 were amended.

Claims 36-65 were added.

Claims 30-33, 35 and 36-65 are now pending and under examination.

Claims 30-33, 35 and 36-65 are generic to a plurality of disclosed patentably distinct species comprising essential genes (genes essential for metabolism, growth, cell wall integrity, cell membrane integrity; genes encoding modification methylase, DNA ligase, DNA gyrase, phospholipase; genes catalyzing biosynthesis of cell wall) or lethal genes (gef gene family; genes for plasmid maintenance; gene encoding a nuclease,

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phospholipase, endolysin, holin or a tRNA with a wrong codon; a combination of bacteriophage P22 lysis genes 13 and 19).

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species from the essential genes and a single disclosed species from the lethal genes, even though this requirement is traversed.

Essential Genes

Species A: genes for metabolism

Species B: genes for growth

Species C: genes for cell wall integrity (asd)

Species D: genes for cell membrane integrity

Species E: genes encoding modification methylase

Species F: genes encoding DNA ligase

Species G: genes encoding DNA gyrase

Species H: genes encoding phospholipase

Species I: genes catalyzing biosynthesis of cell wall

Lethal Genes

Species AA: gef gene family

Species BB: genes for plasmid maintenance

Species CC: genes encoding a nuclease

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Species DD: genes encoding phospholipase

Species EE: gene encoding endolysin

Species FF: genes encoding holin

Species GG: genes encoding a tRNA with a wrong codon

Species HH: genes a combination of bacteriophage P22 lysis genes
13 and 19

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must

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be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

The Group and/or Art Unit location of your application in the Patent and Trademark Office may have changed. To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to Group Art Unit 1641.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to V. Ryan whose telephone number is (703)305-6558.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703)308-0196.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Housel, can be reached on (703) 308-4027.

Papers related to this application may be submitted to the Group 1600 by facsimile transmission. The faxing of such papers must conform with the notice published in the Official Gazette,

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1096 OG 30 (November 15, 1989). The fax number for Art Unit 1641 is (703) 308-4242.

V. Ryan
Patent Examiner/Art Unit 1641
April 2000
Ryan/vr

Christopher L. Chin
CHRISTOPHER L. CHIN
PRIMARY EXAMINER
GROUP 1800 / 641